

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In re

Case No. 14-10421-MLB

CASEY R. INGELS,

Defendant.

JOHN S. PETERSON, as Bankruptcy Trustee,

Adversary No. 14-01387-MLB

Plaintiff,

vs.

DEFENDANT'S TRIAL BRIEF

CASEY R. INGELS,

Defendant.

Casey R. Ingels, Defendant ("Mr. Ingels" or "Defendant"), by and through counsel,  
J. Todd Tracy, Jamie J. McFarlane and The Tracy Law Group PLLC, hereby presents his trial  
brief.

**INTRODUCTION**

The Plaintiff, Chapter 7 Trustee John Peterson, has alleged that the Defendant  
committed a false oath under Section 727(a)(4)(A) based upon statements the Defendant made

DEFENDANT'S TRIAL BRIEF- 1

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1 at his 341 Meeting relating to the MJ Ray Ingels Irrevocable Trust. The Plaintiff's Pretrial  
2  
3 Statement, Docket Entry #32, states the issue, "Did the Defendant knowingly and  
4  
5 fraudulently provide false statements under oath at the 341 meeting held on March 11, 2014,  
6  
7 regarding the funding of the MJ Ray Ingels Family Irrevocable Trust, property at 9830  
8  
9 Dekoven Lakewood, Washington, transfers of property to and from the trust and to MJB  
10  
11 Consulting LLC and/or his knowledge of MJB Consulting, LLC?" The scope of the trial  
12  
13 should be limited to the Plaintiff's Pretrial Statement and the specific factual allegations in the  
14  
15 Plaintiff's Complaint that the Defendant has had notice of in order to avoid any unfair prejudice  
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17 to the Defendant.  
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21 At the 341 Meeting, The Plaintiff and the Defendant found it very difficult to  
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23 communicate with each other. The Plaintiff's questioning was confusing, open-ended, and  
24  
25 vague. The Defendant repeatedly asked if his answers were clear and offered additional  
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27 information beyond the questions asked. The Defendant did his best to answer the questions  
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29 of the Plaintiff truthfully and clarify his answers once he could decipher what the Plaintiff was  
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31 asking or realized that his answers could be perceived as untruthful. The Defendant did his  
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33 best to make sure he testified truthfully.  
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37 This adversary case, as alleged in the Plaintiff's Complaint, is limited to the Defendant's  
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39 answers at the 341 Meeting regarding the MJ Ray Ingels Irrevocable Trust. The Defendant has  
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41 never held an interest in the MJ Ray Ingels Irrevocable Trust and the Defendant has never  
42  
43 served as trustee of the Irrevocable Trust.  
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45

46 At the 341 Meeting, the Defendant told the Plaintiff that the MJ Ray Ingels Irrevocable  
47  
Trust was never funded based upon the lack of assets in the Irrevocable Trust with equity.

1 Only moments after stating the Irrevocable Trust had no assets and was not funded, without an  
2  
3 additional question posed by the Trustee, the Defendant clarified that the Irrevocable Trust had  
4  
5 no assets with equity available. He stated that the Irrevocable Trust held one parcel of real  
6  
7 property that has no equity available for creditors. This parcel of real property that was  
8  
9 purchased and conveyed to the Irrevocable Trust in 2009 is not property of the bankruptcy  
10  
11 estate and the Plaintiff has no evidence to show otherwise.  
12  
13

14 The testimony of the Defendant will show that he had no incentive to commit fraud  
15  
16 based upon his lack of an interest in the Irrevocable Trust and the lack of equity in the real  
17  
18 property held by the Irrevocable Trust, especially, considering the likelihood of a default due to  
19  
20 fact that the entire principal balance was coming due on January 1, 2015. The audio recording  
21  
22 of the 341 Meeting makes it clear that the Defendant clarified his response moments later  
23  
24 without additional questioning once he realized that the Trustee wanted to know about the  
25  
26 underwater property held by the Irrevocable Trust. The Defendant did not view the Dekoven  
27  
28 Property held by the Irrevocable Trust as an asset because he never held an interest in the  
29  
30 Irrevocable Trust and there was no equity available in the Dekoven Property held by the  
31  
32 Irrevocable Trust.  
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### 37 UNDISPUTED FACTS

38  
39 1. Mr. Ingels filed a Chapter 7 bankruptcy petition in this Court on January 23, 2014,  
40  
41 under Case No. 14-10421-MLB.  
42

43 2. The 341 examination was held on March 11, 2014 and no creditors were present.  
44

45 3. After receiving two extensions of the objection to discharge deadline, the Chapter  
46  
47 7 Trustee, John Peterson, filed an adversary complaint on September 29, 2015, under Case

DEFENDANT'S TRIAL BRIEF- 3

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1 No. 14-01387-MLB, alleging that Mr. Ingels made material misstatements in the 341  
2  
3 examination regarding the MJ Ray Ingels Irrevocable Trust, and asking the Court to deny a  
4  
5 discharge under 727(a)(4)(A) of the Bankruptcy Code.  
6  
7

8 4. The Defendant's Answer denies that he gave a false oath.  
9

10 5. The Plaintiff's Pretrial Statement, Docket Entry #32, states the issue of law as  
11  
12 "Did the Defendant knowingly and fraudulently provide false statements under oath at the  
13  
14 341 meeting held on March 11, 2014, regarding the funding of the MJ Ray Ingels Family  
15  
16 Irrevocable Trust, property at 9830 Dekoven Lakewood, Washington, transfers of property  
17  
18 to and from the trust and to MJB Consulting LLC and/or his knowledge of MJB Consulting,  
19  
20 LLC?  
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22

23 5. Trial is set for June 8, 2015. The Trustee has listed only two witnesses: himself  
24  
25 and the Defendant.  
26  
27

## 28 **PERTINENT FACTS AND PROCEDURAL HISTORY.**

### 29 **Pre-bankruptcy background**

30 Mr. Ingels was formerly married to Gwendolyn J. McMurtrey; they were divorced on  
31  
32 June 8, 2009. In 2009, after the divorce, the Defendant created the MJ Ray Ingels  
33  
34 Irrevocable Trust ("Irrevocable Trust") for the benefit of the couple's two young sons, as  
35  
36 required by the Decree of Dissolution.  
37  
38  
39  
40

41 The Decree of Dissolution requires that eight properties be transferred into the  
42  
43 Irrevocable Trust for the boys' benefit. The Irrevocable Trust's goal was to use cash flow  
44  
45 from the properties to pay for the mortgages on two subsequent properties that the  
46  
47

1 Defendant and his ex-wife were in the process of purchasing for the benefit of the  
2  
3 Irrevocable Trust.  
4

5 On November 15, 2009, the Defendant created the Irrevocable Trust. Tricia Yue  
6  
7 was named the Trustee of the Irrevocable Trust, and M. Ingels and J. Ingels, the Defendant's  
8  
9 sons, were listed as beneficiaries of the Irrevocable Trust. As indicated in the Irrevocable  
10  
11 Trust, the Grantor, Casey Ingels, declared pursuant to the Irrevocable Trust language that  
12  
13 the Irrevocable Trust cannot be revoked at any time by the Grantor. The Defendant  
14  
15 decided to use Tricia Yue as Trustee of the Irrevocable Trust based upon his experience with  
16  
17 her in the legal field while she was working as a paralegal for Jack Connelly at the Law  
18  
19 Offices of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim. Mr. Ingels met Ms.  
20  
21 Yue while working as an attorney at the same firm. Based upon Ms. Yue's experience in real  
22  
23 estate transfers, Mr. Ingels trusted her to properly transfer real property pursuant to the  
24  
25 Decree of Dissolution.  
26  
27  
28  
29

30 On December 3, 2009, by Special Warranty Deed, the Grantors of the Living Trust  
31  
32 of James R. Paulson and Marijane L. Paulson ("Note Holders") conveyed real property  
33  
34 located at 9830 Dekoven Dr. SW, Lakewood, Washington ("Dekoven Property") to Tricia  
35  
36 Yue, as Trustee of the Irrevocable Trust. Mr. Ingels had no previous connection with the  
37  
38 Note Holders. In exchange for the Special Warranty Deed on the Dekoven Property, the  
39  
40 Trustee of the Irrevocable Trust, Ms. Yue, executed a Deed of Trust for the Note Holders,  
41  
42 securing payment of \$612,000.00 with interest due and payable in full on January 1, 2015,  
43  
44 and Mr. Ingels contributed a down payment in the amount of \$68,000.00 in order to  
45  
46 complete the purchase. Any interest Mr. Ingels had in the \$68,000 down payment made in  
47

1 2009 was lost the moment the Irrevocable Trust was granted the Dekoven Property. The  
2  
3 underlying promissory note ("Promissory Note") required interest only payments until the  
4  
5 due date of January 1, 2015, leaving the entire principal balance due and payable on January  
6  
7 1, 2015. Mr. Ingels did not attend the closing of the Dekoven Property, nor did he sign any  
8  
9 of the transfer documents, as he did not have any authority to do so, as he was not the  
10  
11 Trustee of the Irrevocable Trust. The total amount of secured debt owed against the  
12  
13 Dekoven Property at the time of filing the underlying bankruptcy case was in excess of  
14  
15 \$612,000.00 due to the fact that no principal payment amount was made on the Promissory  
16  
17 Note or required.  
18  
19

20  
21 Addressing the other alleged property interest in the factual allegation made by the  
22  
23 Plaintiff regarding MJB Consulting, in 2011, Kathryn Hanson created MJB Consulting, an  
24  
25 Idaho Limited Liability Company. The Debtor has no ownership interest in MJB  
26  
27 Consulting, LLC, and never has. The Debtor was not aware that MJB Consulting, LLC  
28  
29 transferred the Dekoven Property, only that the asset had been transferred to an LLC. The  
30  
31 Debtor had performed consulting work for the MJB Consulting, LLC, as an independent  
32  
33 contractor.  
34  
35

36  
37 The Defendant will testify that he never has been a beneficiary of the Irrevocable  
38  
39 Trust and never was in charge of the disposition of its assets. He will also testify that he has  
40  
41 never had an interest in MJB Consulting, LLC. The Defendant did make interest only  
42  
43 payments on the Promissory Note that occurred more than two years prior to the  
44  
45 bankruptcy filing. As the Debtor's financial situation worsened, he ceased making payments  
46  
47 on the Promissory Note. The Defendant's testimony will show that he had absolutely

DEFENDANT'S TRIAL BRIEF- 6

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1 nothing to gain from making the alleged false oath relating to his testimony about the  
2  
3 Irrevocable Trust, demonstrating that there was no fraudulent intent by the Defendant  
4  
5 relating to any alleged false oath.  
6  
7

### 8 **Bankruptcy background**

9

10 The Defendant filed a Chapter 7 bankruptcy in this Court on January 23, 2014. Prior  
11  
12 to filing his bankruptcy case, the Defendant disclosed the existence of the Irrevocable Trust  
13  
14 to his bankruptcy counsel, Noel Shillito. The Defendant did not list the Irrevocable Trust in  
15  
16 his original bankruptcy schedules based upon the advice of his counsel because he has never  
17  
18 held an interest in the Irrevocable Trust that was established in 2009. A 341 Meeting was  
19  
20 held on March 11, 2014. The Trustee asked the Defendant a number of questions about  
21  
22 the Irrevocable Trust, including questions about transfers of property to and from the  
23  
24 Irrevocable Trust, and transfers to an LLC from the Irrevocable Trust.  
25  
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27

28 Mr. Ingels answered the Trustee's questions truthfully, to the best of his ability. He  
29  
30 and the Trustee found it very difficult to communicate with each other. The Trustee asked  
31  
32 whether the MJ Ray Irrevocable Trust had any assets, and the Defendant said "no," because  
33  
34 he had no financial interest in the DeKoven house, he wasn't a beneficiary of the Irrevocable  
35  
36 Trust, and he did not transfer the Dekoven house into the Irrevocable Trust. Without a  
37  
38 subsequent question posed, as part of the same answer to the Plaintiff's question about  
39  
40 whether the Irrevocable Trust had any assets, the Defendant clarified his response that the  
41  
42 Irrevocable Trust had real estate located in "Lakewood" and "the piece of property in  
43  
44 Lakewood has no equity in it."  
45  
46  
47

1 Six months after the creditors' exam, the Defendant learned that the manager of  
2  
3 MJB Consulting had transferred the Dekoven property to MJB Consulting on September 4,  
4  
5 2014 by quitclaim deed. As he stated at the 341 Meeting, Mr. Ingels did not know which  
6  
7 entity transferred the Dekoven Property, as he had no part in any of the transfers referenced  
8  
9 by the Plaintiff. It was the Defendant's understanding that the purpose of that transfer was  
10  
11 to allow Kathryn Hanson, who had started living in the Property and was making the  
12  
13 payments, to have the benefit of those payments. As the Defendant explained at the 341  
14  
15 meeting, he and Ms. Hanson have a child together, but they are not in a personal  
16  
17 relationship. Once Ms. Hanson realized that she would not be able to meet the due date for  
18  
19 payment in full on the Promissory Note for the Dekoven Property, she then transferred the  
20  
21 Dekoven Property back to the Irrevocable Trust. It is the Defendant's understanding that  
22  
23 this transfer by MJB Consulting from the Irrevocable Trust and the transfer back to the  
24  
25 Irrevocable Trust by Ms. Hanson was never authorized by Ms. Yue, as Trustee of the  
26  
27 Irrevocable Trust.  
28  
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31

32 After receiving two extensions of the discharge deadline, on September 29, 2014, the  
33  
34 Trustee filed an adversary complaint against the Defendant, asking the Court to deny a  
35  
36 discharge under Section 727(a)(4)(a). He alleges that Defendant knowingly and fraudulently  
37  
38 gave a false oath or account at the creditors' exam, by making material misstatements about  
39  
40 the funding of the Irrevocable Trust, the DeKoven property, transfers of the Property to  
41  
42 and from the Trust and to MJB Consulting, and about his knowledge of MJB Consulting.  
43  
44

45 Adversary Complaint, Para. 8.  
46  
47



1 The Defendant denies that he gave a “false oath” within the meaning of Section  
2  
3 727(a)(4)(A) at the 341 meeting.  
4

5  
6 **DEFENDANT'S POSITION**  
7

8 1. The Defendant did not knowingly or fraudulently make a false oath or account.  
9  
10 He answered the Trustee's questions truthfully at the 341 exam, and has done so throughout  
11 the course of his bankruptcy. The Defendant had no incentive to fraudulently conceal an  
12 asset that he has never had an interest in, considering the fact that the asset had no equity  
13 beyond the secured creditor's interest with a balloon payment coming due on January 1,  
14 2015 to the Note Holders that he could never satisfy and the Irrevocable Trust could never  
15 satisfy due to its lack of funds.  
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22

23 2. The Defendant did not list the Irrevocable Trust's Dekoven Property as an asset  
24 on Schedule A, because it belonged to the Irrevocable Trust and he was not a beneficiary of  
25 the Irrevocable Trust, nor could he ever be. The Chapter 7 Trustee asked Mr. Ingels  
26 whether any assets were held by the Irrevocable Trust, and Mr. Ingels answered, “no” and  
27 then clarified the first part of his answer that the Irrevocable Trust had an underwater piece  
28 of real property in Lakewood that he did not consider to be an asset. This clarification about  
29 the Dekoven Property being held in the Irrevocable Trust was done without any subsequent  
30 questions by the Trustee. The Trustee then asserted that the Irrevocable Trust did have  
31 assets. Mr. Ingels explained that he "misspoke then," because he did not believe that  
32 underwater real property was an “asset,” since it lacked any equity available for creditors and  
33 it was not part of his bankruptcy estate. At no time did the Plaintiff ask if the Defendant  
34 made a down payment on the Dekoven Property or how the Dekoven Property was  
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1 purchased. At the time of the bankruptcy filing, the Dekoven Property had a taxed assessed  
2 value of \$505,300.00 and an amount owing of at least \$612,000.00. Ultimately, the trustee of  
3 the Irrevocable Trust, Tricia Yue, executed a deed-in-lieu of foreclosure at the request of the  
4 Note Holders due to the Irrevocable Trust's inability to make payments due to a lack of  
5 funds and the entire principal balance of the Promissory Note being due.  
6  
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8  
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10

11 4. When listening to the Defendant's disjointed testimony at the 341 Meeting, it is  
12 important to note that Mr. Ingels is a Disabled Veteran. He suffered a traumatic brain injury  
13 while serving with the U.S. Army Rangers, for which he received a substantial disability  
14 rating from the Veterans Administration. He has received years of speech and cognitive  
15 therapy. Although the Defendant often operates at a high level, his disability requires  
16 accommodation and can return under stress. The stress of the 341 exam may have added to  
17 his difficulty in responding to the Trustee's questions in a manner that the Trustee  
18 understood.  
19  
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## 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47

**LEGAL ISSUE**

Can the Trustee prove by a preponderance of the evidence, under 11 U.S.C. §  
727(a)(4)(A), that the Defendant knowingly and fraudulently, in or in connection with the  
case, made a false oath or account related to the MJ Ray Ingels Irrevocable Trust that would  
except his debts from discharge?

## **ANALYSIS**

Exceptions to dischargeability "should be strictly construed in order to serve the  
Bankruptcy Act's purpose of giving Defendants a fresh start." 6 *Collier on Bankruptcy*

¶727.01[4] at 727-12, 16 ed. 2015, Resnick Alan N., Sommer Henry J. Section 727's denial

1 of discharge is construed liberally in favor of the Defendant and strictly against those  
2  
3  
4 objecting to discharge. *In re Adeeb*, 787 F.2d 1339, 1342 (9th Cir. 1986).

5 The burden of proof in an adversary proceeding objecting to discharge under §727 is  
6  
7  
8 preponderance of evidence. *Grogan v. Garner*, 498 U.S. 279, 287-288, 112 L. Ed. 2d 755, 111  
9  
10 S. Ct. 654 (1991); *In re Cox*, 41 F.3d 1294, 1297 (9th Cir. 1994).

11  
12 "The reasons for denial of a discharge must be real and substantial rather than  
13  
14 technical and conjectural[.]" 6 Collier on Bankruptcy ¶ 727.01[4], 727-12, Alan N. Resnick &  
15  
16 Henry J. Sommer, eds., 16th ed (2010).

17  
18 "[A] total bar to discharge is an extreme penalty." *Ditto v. McCurdy*, 510 F.3d 1070,  
19  
20 1079 (9th Cir. 2007), *citing Rosen v. Bezner*, 996 F.2d 1527, 1534 (3d Cir. 1993). Those  
21  
22 objecting to discharge "bear[ ] the burden of proving by a preponderance of the evidence  
23  
24 that [the Defendant's] discharge should be denied." *In re Retz*, 606 F.3d 1189, 1196 (9th Cir.  
25  
26 2010), *citing In re Khalil*, 379 B.R. at 172.

27  
28 The trustee cannot meet his burden of proof.  
29  
30

31  
32 **A. THE TRUSTEE MUST ESTABLISH EACH OF THE FOUR ELEMENTS OF**  
33  
34 **727(a)(4) BY THE PREPONDERANCE OF THE EVIDENCE.**

35  
36 In order to prevail on a 727(a)(4) claim, the plaintiff must establish, by a  
37  
38 preponderance of the evidence, each of four elements: "(1) the Defendant made a false oath  
39  
40 in connection with the case; (2) the oath related to a material fact; (3) the oath was made  
41  
42 knowingly; and (4) the oath was made fraudulently." *In re Retz*, 606 F.3d at 1197, 2010 (9th  
43  
44 Cir. Or. 2010).  
45  
46  
47

1 "In keeping with the 'fresh start' purposes behind the Bankruptcy Code, courts  
2  
3 should construe §727 liberally in favor of Defendants and strictly against parties objecting to  
4  
5 discharge." *In re Bernard*, 96 F.3d 1279, 1281 (9th Cir. 1996). This does not alter the burden  
6  
7 on the objector, but rather means that "actual, rather than constructive, intent is required"  
8  
9 on the part of the Defendant. *In re Khalil*, 379 B.R. 163, 172 (BAP 9th Cir. C.D. Cal. 2007).  
10

11 While the creditor bears the ultimate burden of proof under 11 U.S.C.S. § 727(a)(4),  
12  
13 once the creditor has demonstrated an omission or false statement, the burden shifts to the  
14  
15 debtor to show that the omission was the result of an honest mistake, or to otherwise  
16  
17 provide a credible explanation for the false statement. *In re Ferre*, 2006 Bankr. LEXIS 2833,  
18  
19 14 (Bankr. N.D. Cal. 2006).  
20  
21

22  
23 **The Defendant Did Not Make a False Oath in Connection With the Case,**  
24 **Within the Meaning of §727(a)(4)(A).**  
25

26 The Plaintiff asserts that the Defendant made false statements at the creditors' exam  
27  
28 relating to the Irrevocable Trust. The Defendant strongly denies this. The Trustee asserts  
29  
30 that, when he asked Mr. Ingels to disclose any trust that he had created, "the Defendant did  
31  
32 not do so until specifically asked about the MJ Ray Ingels Irrevocable Trust." Plaintiff's  
33  
34 Response to Defendant's First Set of Interrogatories, Int. No. 1.  
35  
36

37 The Trustee asserts that the Defendant made the following statements, and that  
38  
39 these statements were false:  
40  
41

42 The MJ Ray Ingels Trust was never funded or moved forward with.  
43

44 Properties were to be placed in the trust but that has yet to happen due to lack of  
45  
46 equity in the properties.  
47

The MJ Ray Ingels Trust never had any assets.

1  
2 The property in Lakewood does not have any equity in it.

3  
4 The property was transferred by Tricia Yue to an LLC.

5  
6 The Trustee of the MJ Ray Ingels Trust has no relationship to the Defendant.

7  
8  
9 \$680,000 is owed on the Lakewood Property.

10  
11 *Id.*

12  
13 The Trustee asserts that he knows, "from public documents," and the Defendant's  
14 subsequent statements, that these statements were not true. Plaintiff's Response to  
15 Defendant's Int. No. 2. His response does not state how he knows that these statements  
16 were not true, or in what way they were not true. Conveniently, the Trustee ignores the  
17 majority of the Mr. Ingels' answer to the question about whether the Irrevocable Trust had  
18 any assets. Mr. Ingels clarified the first part of his answer that there were no assets in the  
19 Irrevocable Trust by stating that the Trust did have a piece of real property in Lakewood  
20 that had no equity in it.  
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31 Intent, under 727(a)(4)(A) "can be established by circumstantial evidence," and  
32 "statements made with reckless indifference to the truth are regarded as intentionally false."  
33  
34 *In re Korte*, 262 B.R. 464, 474 (BAP 8th Cir. 2001). Thus, in *Korte*, the BAP affirmed the  
35 bankruptcy court's denial of discharge under 727(a)(2) and (4). In that case, the Defendant's  
36 statements were untruthful because he failed to disclose, on his schedules and in his  
37 testimony at the first meeting of creditors, the interests which he retained in property that  
38 was transferred to a trust. In *Korte*, the Defendant retained actual possession of much of that  
39 property and continued to use it both personally and in his business after the case filing.  
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1 In contrast to *Korte*, Mr. Ingels' testimony at the 341 exam was truthful. Mr. Ingels  
2 did disclose that the Irrevocable Trust held real property in Lakewood with no equity  
3 available. While Mr. Ingels could have done a better job answering the questions in order to  
4 create less confusion, he corrected himself during the same answer to the Trustee's question  
5 about assets held by the Irrevocable Trust. Considering the allegations relating to the  
6 specific testimony provided at the 341 exam by the Defendant, there were no misstatements  
7 or omissions that would satisfy the first element required to be proven by a preponderance  
8 of the evidence, a false oath.  
9

10 In *Olympic Coast Inv., Inc. v. Wright*, 364 B.R. 51 (Bankr. D. Mont. 2007), a creditor  
11 sought a denial of Defendants' discharge under § 727(a)(4)(A). The Defendants had testified  
12 they were not involved in certain businesses within six years preceding their Chapter 13  
13 petition, and that they had transferred certain property. The bankruptcy court dismissed the  
14 creditor's complaint. It noted that the businesses and assets from their Chapter 11 case,  
15 which the Defendants had omitted from their original Chapter 13 petition, all involved  
16 defunct or valueless businesses. The court concluded that none of the omitted assets had  
17 any value to the estate. At the 2004 exam, the creditor's counsel asked whether the  
18 Defendant had an accountant with knowledge of his financial affairs, and Defendant had  
19 answered "no." The creditor contended that Defendant made a false oath by failing to  
20 disclose the identity of his accountant, Dick Swenson. The bankruptcy court disagreed, and  
21 held that the answer was not false. *In re Wright*, 364 B.R. at 77. The Defendant testified, at  
22 the trial of the creditor's §727 complaint, that accountant Swenson had not been his  
23 accountant for years. The court noted that the creditor offered no other evidence that the  
24

1 Defendant had an accountant with current knowledge of his finances. Therefore, the court  
2  
3 found it credible and reasonable for the defendant to answer "No" when asked if he  
4  
5 presently had an accountant. *Id.*  
6  
7

8 Furthermore, the creditor "did not show that it asked a logical follow-up question,  
9  
10 such as "Have you ever hired an accountant?" *Wright*, 364 B.R. 77 "It was Larry's oath to  
11  
12 answer the question he was asked truthfully, and he did. The Court finds that OCI failed its  
13  
14 burden to show that the third alleged oath was false, or that it was made knowingly and  
15  
16 fraudulently, or that it detrimentally affected the administration of the estate."  
17  
18

19 In Mr. Ingels case, he did not commit a false oath as he provided testimony at the  
20  
21 341 meeting that the Irrevocable trust had a piece of real estate located in Lakewood that  
22  
23 had no equity in it. The Plaintiff in this case has not demonstrated that Mr. Ingels made a  
24  
25 false oath when considering the entirety of Mr. Ingels' answers at the 341 Meeting to the  
26  
27 questions posed. If the Plaintiff wanted to know about more specifics about the Dekoven  
28  
29 Property held by the Irrevocable Trust and how it was purchased, he could have asked the  
30  
31 appropriate question. Considering all of the testimony provided at the 341 Meeting, the  
32  
33 Plaintiff will be unable to satisfy the first element required under Section 727(a)(4)(A),  
34  
35 demonstrating a false oath was committed by a preponderance of the evidence.  
36  
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39 **The Trustee Cannot Show Materiality, within the Meaning of §727(a)(4)(A).**  
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41 Section 727(a)(4)(A) requires that the relevant false oath relate to a material fact. *In*  
42  
43 *re Retz*, 606 F.3d 1189, 1198 (9th Cir. Or. 2010). An omission or misstatement that  
44  
45 "detrimentally affects administration of the estate" is material. *Id.*  
46  
47

1 "Materiality is broadly defined. A fact is material if it bears a relationship to the  
2  
3 Defendant's business transactions or estate, or concerns the discovery of assets, business  
4  
5 dealings, or the existence and disposition of the Defendant's property." *In re Wills*, 243 B.R.  
6  
7 58, 62 (BAP 9th Cir. 1999). (Held: bankruptcy court erred by denying creditors' motion for  
8  
9 summary judgment under 727(a)(4); case remanded for a determination of whether  
10  
11 Defendants' many false statements and whether omissions were material.  
12  
13

14 "The fundamental purpose of § 727(a)(4)(A) is to insure that the trustee and creditors  
15  
16 have accurate information without having to conduct costly investigations.' That said, a false  
17  
18 statement or omission that has no impact on a bankruptcy case is not material and does not  
19  
20 provide grounds for denial of a discharge under § 727(a)(4)(A)." *In re Khalil*, 379 B.R. 163,  
21  
22 172 (BAP 9th Cir. 2007).<sup>1</sup>  
23  
24

25 Any alleged omissions or misstatements which Mr. Ingels made at the 341 meeting  
26  
27 were not material, because they did not detrimentally affect administration of his bankruptcy  
28  
29 estate. The Defendant disclosed the Dekoven Property at the Meeting of Creditors. The  
30  
31 Defendant disclosed that the Dekoven Property had a note against it at the Meeting of  
32  
33 Creditors. The Plaintiff had the ability to request further information about the Dekoven  
34  
35 Property and the Irrevocable Trust based upon the testimony provided at the Meeting of  
36  
37 Creditors. The Trustee will be unable to demonstrate how the alleged misstatements or  
38  
39 omissions were detrimental to the bankruptcy estate, considering the fact that the real  
40  
41 property held by the Irrevocable Trust was disclosed at the Meeting of Creditors.  
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<sup>1</sup> Affirmed by *In re Khalil*, 578 F.3d 1167 (9th Cir. 2009).



1 At some point, a Chapter 7 Trustee needs to ask specific questions if he wants  
2  
3 answers beyond the disclosures required of a debtor. A Chapter 7 trustee's failure to  
4  
5 exercise his duty to investigate and ask the proper follow-up questions should not result in a  
6  
7 finding that a debtor detrimentally affected the bankruptcy estate because he did not disclose  
8  
9 more than what was asked or required of him.  
10

11  
12 **The Trustee Cannot Show Knowledge within the Meaning of §727(a)(4)(A).**  
13

14 The third element required by § 727(a)(4)(A) is that the defendant acted knowingly in  
15 making the false oath. *In re Retz*, 606 F.3d 1189 (9th Cir. 2010), *citing In re Roberts*, 331 B.R. at  
16  
17 882. A person acts "knowingly" if he or she acts deliberately and consciously. *Roberts* at 883-  
18  
19 884, citing BLACK'S LAW DICTIONARY 888 (8th ed. 2004).  
20  
21

22 "The requirement that the false statement be 'knowingly' made mandates  
23  
24 preponderating proof that the debtor acted 'deliberately and consciously.' An action is  
25  
26 careless if it is 'engaged in without reasonable care.' This is a negligence standard, not a  
27  
28 knowing misconduct standard. A false statement resulting from ignorance or carelessness  
29  
30 does not rise to the level of 'knowing and fraudulent.' *Roberts*, 331 B.R. at 883.  
31  
32

33 In *Roberts*, the debtor failed to disclose rent, certain sale proceeds and certain assets  
34  
35 in his initial disclosure. After the creditor filed an objection to discharge, debtor amended  
36  
37 the statement to include the missing information, but the bankruptcy court denied a  
38  
39 discharge under 727(a)(4). The BAP reversed, on two grounds. First, the bankruptcy court  
40  
41 didn't find that the material nondisclosures in the debtor's statement were knowing. Second,  
42  
43 the bankruptcy court didn't find that the debtor had an intention to defraud; therefore, it  
44  
45 didn't find that he made his nondisclosures "knowingly." *Id.* at 884.  
46  
47

1 In this case, as in *Roberts*, the Defendant did not knowingly make a false oath. Mr.  
2  
3 Ingels will testify that he answered the Trustee's questions truthfully, to the best of his  
4  
5 ability, and that any mistakes, misstatements or omissions were made without knowledge.  
6  
7 Mr. Ingels believed that he was testifying truthfully and clarified his responses to make sure  
8  
9 that they were truthful.  
10

11  
12 Mr. Ingel's case is also similar to *Meer v. Lilly*, 2012 Bankr. LEXIS 5817 (Bankr. D.  
13  
14 Id. 2012). In *Meer*, a creditor had sued the debtor in a separate federal district court action,  
15  
16 but debtor failed to list the claim on his bankruptcy schedules. Creditor filed a complaint  
17  
18 under 727(a)(4), arguing that the omission was a false statement. The bankruptcy court  
19  
20 disagreed and granted the debtor a discharge because he had amended his schedules to  
21  
22 disclose the lawsuit. "While some of the statements might be technically false or in error,  
23  
24 none appear to be material under all the facts and circumstances. More importantly, even if  
25  
26 the statements were material, Plaintiff failed to prove the assertedly false or incomplete  
27  
28 statements were made knowingly and fraudulently." *Meer v. Lilly* at 5817-5818.  
29  
30

31  
32 In *Rafsanjani v. Kuchekzi*, 2010 Bankr. LEXIS 5045 (BAP 9th Cir. 2010), the  
33  
34 bankruptcy court dismissed the creditor's objections to discharge even though there were  
35  
36 numerous errors and deficiencies in the petition and schedules. For example, Defendant  
37  
38 listed no vehicles on Schedule B although at the time he leased a 2004 Mercedes Benz;  
39  
40 owned a second, older, Mercedes and owned a third car that was inoperable.  
41  
42

43  
44 The BAP affirmed. It held that the Defendant's incorrect statements were not  
45  
46 knowing and fraudulent, because "almost all the inaccuracies were corrected within a  
47

1 reasonable time and, considering Defendant's relatively forthright answers given at the  
2  
3 §341(a) meeting, no inference of fraudulent intent can be taken." *Id.* at 8.  
4

5 In Mr. Ingels' case, the alleged misstatements were clarified at the 341 Meeting  
6  
7 within moments after he made the alleged statements and without any further questions  
8  
9 being posed. Based upon the testimony provided by Mr. Ingels at the 341 Meeting, the  
10  
11 Plaintiff will be unable to show that Mr. Ingels knowingly made the alleged misstatements.  
12  
13

14 **The Trustee Cannot Show Fraudulent Intent within the Meaning of §727(a)(4)(A).**  
15

16 Section 727(a)(4)(A) "specifically requires that the debtor make a false oath or  
17  
18 account'knowingly and fraudulently.'" *In re Khalil*, 379 B.R. 163, 174 (9th Cir. BAP 2007).<sup>2</sup>  
19  
20

21 To demonstrate fraudulent intent, plaintiffs bear the burden of showing that: (1) the  
22  
23 debtor made a false statement or omission in bankruptcy schedules; (2) at the time the  
24  
25 debtor knew they were false; and (3) the debtor made them with the intention and purpose  
26  
27 of deceiving the creditors." *In re Retz*, 606 F.3d 1189, 1198-1199 (9th Cir. 2010). (Court of  
28  
29 Appeals affirmed the denial of debtor's discharge. Debtor made many false oaths on his  
30  
31 Schedules and SOFA; the false oaths related to material facts, and they were made knowingly  
32  
33 and fraudulently.)  
34  
35  
36

37 In contrast to *Retz*, the bankruptcy court in *Roberts* failed to find that the debtor acted  
38  
39 fraudulently. The debtor omitted certain assets from his schedules, but amended the  
40  
41 schedules to include the missing information after the creditor objected to discharge. The  
42  
43 bankruptcy court denied a discharge, but the BAP reversed. It held that the bankruptcy  
44  
45  
46  
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<sup>2</sup> *Affirmed* by 578 F.3d 1167 (9th Cir. 2009).

1 court erred because it did not find that the material nondisclosures in the debtor's statement  
2  
3 were knowing, and did not find that he intended to defraud.  
4

5 "The intent required for finding that the debtor has acted fraudulently under §  
6  
7 727(a)(4)(A) with respect to a false oath must be actual intent: constructive fraudulent intent  
8  
9 cannot be the basis for the denial of a discharge." *Roberts*, 331 B.R. 876, 884, citing *In re*  
10  
11 *Devers*, 759 F.2d 751, 753 (9th Cir. 1985).  
12  
13

14 Mr. Ingels' testimony at the 341 Meeting and actions in this case do not satisfy the  
15  
16 fraud element required under Section 727(a)(4)(A). Mr. Ingels did his best to clarify his  
17  
18 responses and offered more information to the Trustee than he was asked about. Mr. Ingles  
19  
20 had no incentive to hinder, delay, or defraud creditors regarding the underwater Dekoven  
21  
22 Property that he had no interest in. There was a balloon payment coming due on January 1,  
23  
24 2015, on the Promissory Note and the Irrevocable Trust did not have the ability to make  
25  
26 payments so it was only a matter of time before it would be lost to foreclosure. Ultimately,  
27  
28 Tricia Yue, as trustee of the Irrevocable Trust, executed a Deed-in-Lieu of Foreclosure due  
29  
30 to the default under the Promissory Note. The Defendant had nothing to gain from the  
31  
32 alleged false oaths, indicating his lack of fraudulent intent.  
33  
34  
35  
36

37 Another case addressing the fraud element, In *Baker v. Mereshian*, 200 B.R. 342 (BAP  
38  
39 9th Cir. Cal. 1996), the Defendants owed a creditor significant legal debts when they  
40  
41 declared bankruptcy. The year before, the debtor husband, a real estate broker, transferred  
42  
43 several pieces of real estate encumbered by debt to the secured creditors. Defendants failed  
44  
45 to list the transfers on their schedules, but revealed all transfers to the creditor's  
46  
47 representative at a meeting of creditors. The bankruptcy court dismissed the creditor's §727

1 complaint. The BAP affirmed, holding that the creditor failed to prove that the Defendants  
2  
3 had a fraudulent intent when they transferred real estate to other creditors before the  
4  
5 bankruptcy.  
6

7  
8 In Mr. Ingels' case, there was no failure to disclose a transfer to a trust in his  
9  
10 schedules or in answering the questions posed by the Trustee at the Meeting of Creditors.  
11  
12 At the 341 Meeting, Mr. Ingels did disclose why the Irrevocable Trust was setup, the fact  
13  
14 that he did not hold an interest in the Irrevocable Trust, and the fact that the Irrevocable  
15  
16 Trust held a piece of real property located in Lakewood that had no equity in it.  
17

18  
19 The *Mereshian* Court cited the holding of *In re Adeeb*, 787 F.2d 1339, 1342 (9th Cir.  
20  
21 1986)(stating that "discharge of debts may be denied under Section 727(a)(2)(A) only upon a  
22  
23 finding of actual intent to hinder, delay, or defraud creditors"). In this case, it is clear that  
24  
25 there is no intent to hinder, delay, or defraud creditors on the part of the Defendant, as he  
26  
27 did not have any interest in the Irrevocable Trust and the property held by the Irrevocable  
28  
29 Trust had no value. The Defendant had no incentive to hinder, delay, or defraud creditors  
30  
31 regarding the underwater property held by the Irrevocable Trust.  
32  
33

34  
35 Mereshian also cited 4 Collier on Bankruptcy, P 727.04[1] at 727-59 (15th ed. 1996)  
36  
37 (stating that to deny a discharge under Section 727(a)(4), "the statement must contain matter  
38  
39 which the Defendant knew to be false and the Defendant must have included them willfully  
40  
41 with intent to defraud"). And *Mereshian* cited the holding that "Fraudulent intent may be  
42  
43 established by circumstantial evidence, or by inferences drawn from a course of conduct."  
44  
45 *Devers*, 759 F.2d 751, 753-54 (9th Cir. Mont. 1985). Thus, a court may look to all the  
46  
47 surrounding facts and circumstances. 4 Collier, supra, P 727.02[3] at 727-16-17.

1 Over the course of the Meeting of Creditors, the Defendant asked if his answers  
2 were clear or if the Trustee understood his answers in an effort to make sure the Trustee had  
3 what he needed after the Defendant clarified his testimony. This does not indicate conduct  
4 that the Defendant was attempting to hide or conceal assets held by the Irrevocable Trust.  
5  
6 Considering all of the Defendant's testimony at the 341 Meeting, the Plaintiff will be unable  
7 to demonstrate that the Defendant had the requisite fraudulent intent needed to satisfy a  
8 claim under Section 727(a)(4)(A).  
9

### 10 CONCLUSION

11 The Defendant respectfully requests the Court grant the Defendant a discharge. Mr.  
12 Ingels answered the Trustee's questions truthfully at the 341 Exam and clarified any  
13 inaccurate answers promptly. The Trustee cannot meet his burden of proving, by a  
14 preponderance of the evidence, that the Defendant knowingly and fraudulently, in or in  
15 connection with the case, made a false oath or account that would except his debts from  
16 discharge.  
17

18 For the reasons stated above, the Defendant respectfully requests that the Court  
19 dismiss the Plaintiff's Complaint with prejudice; and grant a discharge to the Defendant.  
20

21 RESPECTFULLY SUBMITTED THIS this 1st day of June 2015.  
22

23 THE TRACY LAW GROUP PLLC  
24

25 By /s/Jamie McFarlane  
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27 Attorneys for Defendant Casey R. Ingels  
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